

E-FILED on 6/12/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.;
PETER BESSELINK; MEMORY METALS
HOLLAND, B.V.,

Defendants.

No. C-04-03843 RMW

ORDER REGARDING SCHEDULING OF
SCHLUMBERGER TECHNOLOGY
CORPORATION'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

[Re Docket Nos. 135, 139, 140, 142]

Schlumberger Technology Corporation ("STC") has moved for summary adjudication that Kentucky Oil Technology, N.V. ("KOT") lacks standing to pursue its claim against STC for trade secret misappropriation or KOT's request to correct inventorship. KOT filed an affidavit in opposition under Rule 56(f), requesting more time to obtain testimony from others involved in transfers of the intellectual property rights KOT asserts against STC.

Here, KOT bears the burden of showing that the additional discovery it wishes to engage in will lead to admissible evidence that would preclude the court granting STC's motion for summary adjudication. *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 921 (9th Cir. 1996). KOT's lack of diligence in pursuing past discovery is a proper basis for denying KOT's Rule 56(f) request. *Id.*

The court is disturbed that KOT appears to lack at present evidence establishing that it owns the trade secrets it alleges STC misappropriated. The action has been before this court since September 2004 (having been transferred here from the Southern District of Texas). KOT filed counterclaims against KOT in November 2004, including claims against STC for trade secret misappropriation and correction of inventorship. Docket no. 14. That KOT at this juncture lacks evidence that it owns the trade secrets at issue indicates a lack of diligence on its part. Its request for additional time to develop evidence to oppose STC's motion on this point is therefore denied.


KOT's Rule 56(f) affidavit does not show that there further discovery is needed regarding any disputed issues of material fact relevant to the correction of inventorship issue.¹ Furthermore, KOT does not show it has been diligent with respect to this issue. KOT was made aware that STC would challenge KOT's standing to pursue its counterclaim for correction of inventorship no later than February 2005, when STC filed a motion to dismiss on that basis. *See* docket no. 34. KOT's request for additional time to develop evidence to oppose STC's motion on this point is therefore denied.²

ORDER

For the foregoing reasons, the court:

1. denies KOT's request for additional time to conduct discovery under Rule 56(f);
2. instructs KOT to file any opposition to STC's motion for partial summary judgment by June 30, 2006;
3. instructs STC to file any reply by July 7, 2006;
4. sets STC's motion for hearing on July 21, 2006 at 9 a.m.

DATED: 6/12/06



RONALD M. WHYTE
United States District Judge

¹ KOT admits as much, stating that "it would appear that no additional evidence is required." Pisano Decl. ¶ 45.

² STC's motion to strike portions of Nicola Pisano's declaration is therefore moot.

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16 **Dated:** 6/12/06

/s/ JH
Chambers of Judge Whyte